

**REMARKS**

Claims 9 and 13-17 presently appear in this case. Claims 16 and 17 have been allowed. The official action of August 15, 2003, has now been carefully studied. Reconsideration and allowance are hereby respectfully urged.

Briefly the present invention relates to novel isolated polypeptides which are involved in the process of apoptosis, as well as analogs, fragments and derivatives thereof and antibodies thereto.

Claim 9 has been objected to for depending on a subsequent claim 13. However, the examiner has indicated that the objection will be dropped at the time of allowance when the examiner renumbers the claims in their proper order.

As the examiner acknowledges, the MPEP section in question relates to the numbering of claims at the time of allowance. As this is out of applicant's hands and the examiner has indicated that he would renumber the claims properly at the time of allowance, the issue is moot.

Claims 13, 9, 14 and 15 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite. The examiner states that claim 13 recites the limitation "the biological activity" in substep (b) and (d), but there is no antecedent basis therefor. The examiner also states that claim 13 is indefinite for the recitation of the phrase

"retains the biological activity thereof" because it is unclear what biological activity the claimed protein is to have. This part of the rejection is respectfully traversed.

Claim 13(b) and (d) have now been amended to delete the term "the biological activity" and to specify just what biological activity the variants or fragments must have. Support for this language is found in the example with the heading:

Inducible Expression of 95 in MCF-7 Cells  
Revealed Delay in their Growth Rate and  
Induced Apoptosis

in paragraphs 277 and 278, on pages 113 and 114, of the present specification. This very specific test for biological activity can readily be conducted to determine whether any given analog falls within the scope of the claim.

Reconsideration and withdrawal of this rejection is therefore respectfully urged.

The examiner states that claim 15 recites the limitation "the naturally occurring polypeptide of (a)(1)", while there is insufficient antecedent basis for this limitation in the claims.

Claim 15 has now been amended to change the term "naturally occurring polypeptide" to read "protein", which has antecedent basis in claim 13. Reconsideration and withdrawal

of this part of the rejection is therefore also respectfully urged.

Claims 13, 9, 14 and 15 have been rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. The examiner states that the subject matter embraced by the embodiments (a)(ii) and (a)(iii) of claim 13 reads on polypeptides that do not have any particular function, as well as functions which are not described by the specification. The examiner states that amending the claimed embodiments to explicitly recite a functional limitation of the claimed polypeptide, such as inducing apoptosis, would overcome this rejection. This rejection is respectfully traversed.

Claim 13 sections (a)(ii) and (a)(iii) have now been amended to specify that the protein must have the property of inducing cell apoptosis when overexpressed in human epithelial breast carcinoma MCF-7 cells. This language is supported in the specification as discussed hereinabove. Accordingly, reconsideration and withdrawal of this rejection is also respectfully urged.

The allowance of claims 16 and 17 is hereby gratefully acknowledged. It is believed that, in light of the present amendments to the claims, all of the claims should now be in condition for allowance.

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Amdt. dated January 15, 2004

It is submitted that all of the claims now present in the case clearly define over the references of record and fully comply with 35 U.S.C. §112. Reconsideration and allowance are therefore earnestly solicited.

Respectfully submitted,

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